

ESTTA Tracking number: **ESTTA560456**

Filing date: **09/20/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91210643
Party	Defendant Blue Gentian, LLC
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Date	09/20/2013
Attachments	4082L.004_Answer_Opp_09202013.pdf(153068 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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TRISTAR PRODUCTS, INC.,)	
)	
Opposer,)	Opposition No. 91210643
)	Mark: design mark
v.)	U.S. Serial No. 85/684,030
)	
BLUE GENTIAN, LLC)	Filed: July 23, 2012
)	Published: January 15, 2013
Applicant.)	

**APPLICANT'S ANSWER
TO AMENDED NOTICE OF OPPOSITION**

Applicant, Blue Gentian, LLC responds to the Amended Notice of Opposition as follows:

With regard to the first paragraph under the heading “Notification of Pending Litigation Between Applicant and Opposer Related to Garden Hoses” on page 2 of Opposer’s Amended Notice of Opposition, Applicant admits that it filed a complaint for patent infringement against Opposer on ***October 23, 2012***, relating to Opposer’s sale of a garden hose called “FLEX~ABLE HOSE”, based upon U.S. Patent Nos. 8,291,941 and 8,291,942, in the U.S. District Court for the Southern District of Florida, ***three months after*** Applicant filed U.S. Trademark Application No. 85/684,030 (the “030 Mark”), on July 23, 2012. That proceeding is now currently pending (Civil Action No. 2:13-cv-01758) in the United States District Court for the District of New Jersey. Applicant denies any implication that this civil action for patent infringement relates to the ‘030 Mark. Applicant denies the remaining allegations set forth in this referenced paragraph.

Applicant responds to Opposer's allegations set forth in COUNTS I, III, and III of the Amended Notice of Opposition as follows:

COUNT I – Section 2(e)(1) of the Trademark Act – Merely Descriptive and/or Generic

1. Denied.
2. The Application speaks for itself. Applicant admits that the application to register the '030 Mark was filed on July 23, 2012, under Section 1(b) of the Trademark Act. Applicant denies the remaining allegations of Paragraph 2.
3. Applicant admits that the "Description of the Mark" section of the application for the '030 Mark states: "The color(s) blue and black is/are claimed as a feature of the mark. The mark consists of a stylized blue coiled hose with a black nozzle and attachment. The entire mark is on a transparent background." Applicant denies the remaining allegations of Paragraph 3.
4. Admit.
5. Admit.
6. Applicant admits that Opposer's expandable garden hose is the subject of Civil Action No. 2:13-cv-01758, which is a suit for patent infringement filed by Applicant against Opposer currently before the U.S. District Court for the District of New Jersey. However, Applicant denies any implication that this civil action for patent infringement relates to the '030 Mark and therefore denies the remaining allegations of Paragraph 6.
7. Admit.
8. Denied.
9. Denied.
10. Denied.

11. Denied.

12. Denied.

COUNT II – Section 2(e)(5) of the Trademark Act – Functional Refusal

1. Denied.

2. Admit.

3. Admit.

4. Applicant admits that Opposer's expandable garden hose is the subject of Civil Action No. 2:13-cv-01758, which is a suit for patent infringement filed by Applicant against Opposer currently before the U.S. District Court for the District of New Jersey. However, Applicant denies any implication that this civil action for patent infringement relates to the '030 Mark and therefore denies the remaining allegations of Paragraph 4.

5. Admit.

6. Admit.

7. Denied.

8. Denied.

9. Applicant admits that it did not disclose U.S. Pat. No. 8,291,941 during the prosecution of the application for the '030 Mark. However, Applicant denies the implication that there was any duty to disclose the patent in connection with the application and therefore denies the remaining allegations in Paragraph 9.

10. Applicant admits that it did not disclose U.S. Pat. No. 8,291,942 during the prosecution of the application for the '030 Mark. However, Registrant denies the implication that there was any duty to disclose the patent in connection with the application and therefore denies the remaining allegations

in Paragraph 10.

11. Applicant denies that the '030 Mark is a product design trade dress mark and therefore denies the allegations in Paragraph 11.

12. Denied.

13. Denied.

14. Denied.

COUNT III – Trademark Sec. 1, 2, and 45 – Failure to Function as Trademark

1. Denied.

2. Admit.

3. Applicant admits that Opposer's expandable garden hose is the subject of Civil Action No. 2:13-cv-01758, which is a suit for patent infringement filed by Applicant against Opposer currently before the U.S. District Court for the District of New Jersey. However, Applicant denies any implication that this civil action for patent infringement relates to the '030 Mark and therefore denies the remaining allegations of Paragraph 3.

4. Applicant admits that it did not submit Trademark Section 2(f) evidence during the prosecution of the '030 Mark to establish acquired distinctiveness. Applicant denies the implication that Section 2(f) evidence was required to be disclosed by Applicant and therefore denies the remaining allegations of Paragraph 4.

5. Denied.

6. Denied.

7. Denied.

WHEREFORE, Applicant requests that the Amended Notice of Opposition be denied.

Dated:

Respectfully submitted,

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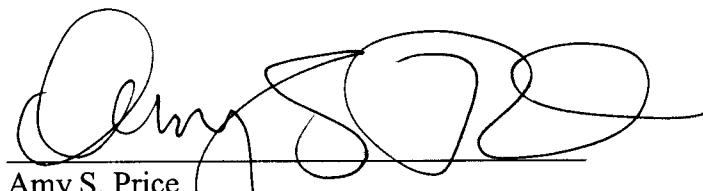
Amy S. Price

Attorneys for Applicant Blue Gentian, LLC

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Applicant's Answer to Opposer's Amended Notice of Opposition was filed electronically through the Electronic System for Trademark Trials and Appeals, on Sept. 20, 2013. Notice of this filing will be sent to counsel for all parties by operation of the ESTTA, and via email and U.S. First Class Mail. Counsel includes:

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